

APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri
and Mr. Justice Wallace.*

1927,
November 4.

RANI KULANDAIVELU NACHIAR AND ANOTHER
(PLAINTIFFS), PETITIONERS,

v.

INDRAN RAMASWAMI PANDIA THALAVAN
(DEPENDANT), RESPONDENT.*

Court Fees Act (VII of 1870), sec. 7 (iv) (a), and Amendment Act (Madras Act V of 1922), sec. 7 and sch. II-A—Previous suit for possession of a zamindari and alternatively for maintenance—Compromise—Decree for maintenance, suit for possession being withdrawn—Subsequent suit to set aside prior decree—Court-fees payable on latter suit—Applicability of sec. 7, cl. (iv) (a) or sch. II, article 17-A (Amendment Act)—Revision petition against order of lower Court as to court-fees, whether competent.

Where the lower Court passed an order directing the plaintiff to pay additional court-fees on an erroneous view of the court-fee payable, and refused to proceed with the suit unless such sum was paid, the High Court will entertain a revision petition to set aside the order, although an appeal would lie later on on the consequential order that might be passed by the lower Court if the additional stamp duty was not paid.

Ram Rup Dass v. Mahunt Sirjaram Dass, (1910) 14 C.W.N., 932, followed.

Where a plaintiff sued to recover a zamindari with past and future mesne profits and in the alternative prayed for maintenance, and the suit was compromised and a decree passed in accordance therewith for maintenance, the suit for immovable property being withdrawn, and the plaintiff instituted the present suit to set aside the decree on allegations of fraud and other grounds, the proper court-fees payable on the latter suit

* Civil Revision Petition No. 852 of 1926.

was under article 17-A of Schedule II of Act V of 1922 (Madras), viz., Rs. 500, and not under section 7 (iv) (a) of the Court Fees Act, 1870, as amended.

KULANDAI-
VELU
NACHIAR
v.
RAMASWAMI
PANDIA
THALAVAN.

PETITION under section 115, Civil Procedure Code, to revise the order of V. K. KRISHNAN NAMBIYAR, the Additional Subordinate Judge of Tinnevely, in Original Suit No. 66 of 1925.

The material facts appear from the Judgment. The lower Court held that the plaintiff was bound to pay court-fees under section 7 (iv) (a) of the Court Fees Act, 1870 as amended by the Madras Act V of 1922, and directed the plaintiffs to pay the full amount of court-fees which was paid for the plaint in the previous suit. The plaintiffs preferred this Civil Revision Petition against the order.

T. L. Venkatarama Ayyar for petitioners.

S. T. Srinivasagopalachariar for respondent.

The JUDGMENT of the Court delivered by

KUMARASWAMI SASTRI, J.—This Revision Petition arises out of an order of the Subordinate Judge calling upon the plaintiffs to amend the valuation in the plaint and to pay additional court-fees. The suit was to set aside the compromise and the rajinama decree passed in O.S. No. 35 of 1917. O.S. No. 35 of 1917 was filed by the present plaintiffs who claimed to be entitled to the zamindari of Thalavankottai. The prayers in the plaint were for possession of the properties in the schedules to the plaint with past and future mesne profits and in the alternative for maintenance at Rs. 250 a month and past maintenance. The suit was valued at Rs. 1,00,000 and a court fee of Rs. 2,300 was paid. The suit was compromised and a rajinama decree was passed. By the rajinama the plaintiffs withdrew their claim in respect of the immovable properties and got a decree for

KUMARA-
SWAMI
SASTRI, J.

KULANDAI-
VELU
NACHIAR

RAMASWAMI
PANDIA
THALAVAN.

KUMARA-
SWAMI
SASTRI, J.

maintenance at Rs. 50 a month for each of them and also residence. It was recited in the rajinama that the claim for arrears of maintenance has been satisfied. A decree was passed in terms of the rajinama and it is to set aside this decree that the present suit has been filed. The question is whether stamp duty has to be paid on the claim as made in Original Suit No. 35 of 1917 or only on the reliefs which the plaintiffs claim in the present suit and this turns on the construction of section 7, clause IV (a) of the Court Fees Act as amended.

A preliminary objection has been taken as to the maintainability of the Civil Revision Petition on the ground that an appeal would lie against an order dismissing the suit if court-fee was not paid. We are unable to uphold this contention. We think that, where a Judge on an erroneous view of the court-fee payable refuses to proceed with the suit until the proper court-fee is paid, he fails to exercise jurisdiction as the party is entitled to have his case tried if he paid the court fee. In *Sudalaimuthu Pillai v. Sudalaimuthu Pillai*(1), OLDFIELD, J., held that in such cases the provisions of section 115, Civil Procedure Code, have been complied with. After negating the contention that a conditional order, the non-compliance of which would entail the dismissal of the suit, is not revisable under section 115 the learned Judge observes :

“generally it is impossible to hold that an order directing the dismissal of an appeal in case the payment is not made, is not a refusal to exercise jurisdiction in that appeal.”

In *Dodda Sannekappa v. Sakravva*(2), it was held by SRINIVASA AYYANGAR, J., that in a suit for a declaration that certain transactions are not binding on the plaintiff, he is entitled to put his own valuation on the relief which he seeks, that the High Court can interfere in

(1) (1922) 17 L.W., 623.

(2) (1916) 36 I.C., 831.

revision with an erroneous order for payment of deficient court-fee and that it is not necessary that the plaintiff should wait for the dismissal of the suit by disobeying the order and then move the High Court by way of appeal or revision. The learned Judge observes :

KULANDAI-
VELU
NACHIAR
v.
RAMASWAMI
PANDIA
THALAVAN.
—
KUMARA-
SWAMI
SASTRI, J.

“ A preliminary objection was taken by the respondents’ counsel that I should not interfere at this stage, but that the plaintiff should wait for a dismissal of his suit by disobeying the lower Court’s order and then come up by way of appeal or revision.”

In a case, *Ramrup Dos v. Mohunt Sirjaram Dass*(1), the learned Judges held that an order like the present one was really an order declining to entertain jurisdiction unless certain things were done and in that view the High Court has power to interfere with that order. I follow that decision and hold that I have power to interfere at this stage. In *Ramrup Dass v. Mohunt Sirjaram Dass*(1), the High Court interfered in revision where the order like the present one simply directed payment of an additional sum as court-fees. The learned Judges HOLMWOOD and CHATTERJEE, JJ., in dealing with the preliminary objection that no revision lay, observed :

“ But this Court has in more than one case recently interfered with interlocutory orders when such orders appear to be a denial of jurisdiction, and in this case to inform a member of the public who is presumed to bring a declaratory suit in the interest of the public that he cannot bring such a suit without valuing his plaint at the value of the property involved, does really in our opinion amount to shutting him out of the right of suit, and it would be useless to defer this matter until plaintiff had by neglecting to take any further steps in the matter incurred the rejection of his plaint.”

In *Karuppanna Thevar v. Angammal*(2), the suit was by a reversioner for a declaration that a particular alienation by the widow was not binding and for a receiver

(1) (1910) 14 C.W.N., 932.

(2) (1926) 23 L.W., 581.

KULANDAI
VELU
NACHIAR
v.
RAMASWAMI
PANDIA
THALAVAN,
—
KUMARA-
SWAMI
SASTRI, J.

and the question was what was the court-fee payable? A revision petition was filed against the order of the Subordinate Judge and a preliminary objection was taken as to whether a revision lay. VENKATASUBBA RAO, J., following the decisions in *Dodda Sannekappa v. Sakravva*(1) and *Ramrup Duss v. Mohunt Sirjaram Dass*(2), above referred to, held that the High Court could interfere in revision: In *Sudalai muthu Pillai v. Peria Sundaram Pillai*(3), KRISHNAN, J., held that a revision would lie to the High Court against an erroneous order of the Subordinate Judge as to the proper court-fee payable. The learned Judge was of opinion that it was open to the Court to interfere because the question was really one of jurisdiction as the plaint would have to be rejected if proper stamp duty was not paid and that the remedy by way of appeal was a cumbrous remedy. A similar view was taken by VENKATASUBBA RAO, J., in *Venkataramani Ayyar v. Narayanasami Ayyar*(4).

A contrary view has however been taken by PHILLIPS, J., in *Acha v. Sankaran*(5). The learned Judge distinguished the case in *Sudalaimuthu Pillai v. Sudalaimuthu Pillai*(6) above referred to on the ground that in that case the order demanding additional court-fee was coupled with an order of dismissal in case of default. It is difficult to see how the mere addition of the consequence which would, under rule 11 of Order VII, Civil Procedure Code, follow from the non-payment of the court-fee demanded would make any difference, as the same consequence would follow even if the order was silent as to what was to be done in case of non-payment. The other Madras decision above referred to

(1) (1916) 36 I.C., 831.

(3) (1925) 48 M.L.J., 514.

(5) (1928) 23 L.W., 752.

(2) (1910) 14 C.W.N., 932.

(4) (1925) 48 M.L.J., 688.

(6) (1923) 17 L.W., 623.

were not brought to the notice of the learned Judge and he preferred to follow the decision of the Patna High Court in *Massamat Lochmibati Kumari v. Nandkumar Singh*(1), which view KRISHNAN, J., was not inclined to follow, and the decision of the Calcutta High Court in *Gobindu Das Nath v. Sitya Kali Das*(2). In C.R.P. No. 451 of 1926, WALLER, J., followed the decision of PHILLIPS, J., in *Acha v. Sankaran*(3) and observed that, although other Judges of this Court have taken a different view, he prefers to follow the view of PHILLIPS, J., on the ground that the petitioner has other remedies open to him and that it is no answer to say that the appropriate remedy was more cumbrous.

It seems to us that, while Courts would not generally interfere in revision where an equally efficacious remedy is open to the party, they have in several cases interfered where the remedy by way of appeal would entail unnecessary hardships on the party, involve multiplicity of proceedings or would not give the party as complete and efficacious a relief as interference with an interlocutory order, and the case satisfied the requirements of section 115, Civil Procedure Code. In the present case the plaintiff will have to pay an additional stamp duty of over Rs. 1,000 and then raise the question in appeal from the decree which the Subordinate Judge may pass as to the stamp duty leviable or refuse to pay the stamp duty ordered which would entail the necessary consequence of getting the suit dismissed and then appeal to the High Court. The appeal will have to be stamped with the full stamp duty and if the lower Court was wrong, they would have to apply for a refund and get it later on. It may be that the party is not able to pay the additional stamp duty

KULANDAI-
VELU
NACHIAR
v.
RAMASWAMI
PANDIA
THALAVAN.
—
KUMARA-
SWAMI
SASTRI, J.

(1) (1920) 5 P.L.J., 400.

(2) (1919) 51 I.C., 581.

(3) (1926) 28 L.W., 752.

KULANDAI-
VELU
NACHIAR
v.
RAMASWAMI
PANDIA
THALAVAN.

KUMARA-
SWAMI
SASTRI, J.

required in which case he will have to file the appeal as a pauper. It is difficult to see why if the case is one of declining to exercise jurisdiction and the requirement of section 115 are otherwise satisfied, the High Court should decline to interfere when by timely interference it will save a great deal of unnecessary hardship. We think the mere fact an appeal would lie later on consequential orders passed by the Subordinate Judge if the stamp is not paid, is no ground for refusing to entertain the petition to revise the order demanding an erroneous court-fee and declining to proceed with the suit unless the sum erroneously demanded is paid.

We overrule the preliminary objection.

As regards the proper court-fee, the decree which is sought to be set aside simply states that the suit as regards the immovable properties is withdrawn and the only relief granted by the decree is the payment of maintenance. The compromise or the decree does not also give any relief or confer any rights as regards the movable property claimed but only allows maintenance. The Court Fees Amendment (Madras) Act V of 1922 adds the following paragraph as iv (a) between paragraph iv and v of the principal Act. Paragraph iv (a) runs as follows:—

“In a suit for cancellation of a decree for money or other property having a money value or other document securing money or other property having such value. According to the subject matter of the suit and such value shall be deemed to be, if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed.

If a part of a decree or other document is sought to be cancelled, such part of the amount or value of the property.”

It is difficult to see how the compromise decree which is sought to be set aside secures to the plaintiff anything except the maintenance awarded. It does not secure to them any immovable property. The effect

of setting aside the compromise decree will be that the suit which has been withdrawn and in respect of which full court-fee on the value of the property has been paid would have to be proceeded with and it is clear that the setting aside of the compromise decree would not by itself give any property to the plaintiffs but would only give them the right to prosecute a suit which according to them has been terminated in a manner which is not binding on them owing to fraud and other circumstances set out in the present plaint.

Permission to withdraw a suit decides no matters in controversy and does not confer any rights on a party, and the fact that the person withdrawing is precluded from bringing a fresh suit on the same cause of action cannot be said to have that effect. It has been held that an order permitting the withdrawal of a suit or appeal is not a decree within the meaning of the Civil Procedure Code. We need only refer to *Patloji v. Ganu*(1), *Jogodindro Nath v. Sarut Sunduri Debbi*(2) and *Abdul Hossein v. Kasi Sahu*(3).

We think the proper court-fee payable is that payable under article 17-A of Schedule II of the Court Fees Act as amended by Madras Act V of 1922. It is conceded that the value of the suit for purposes of jurisdiction is over Rs. 10,000 and we think the court-fee payable would be Rs. 500. We set aside the order of the Subordinate Judge and direct that the petitioners do pay the difference between the court-fee actually paid and Rs. 500 which we hold is the fee payable within two months from this date. Costs of this petition will abide and follow the result of the suit.

K.R.

(1) (1891) I.L.R., 15 Bom., 370 at 373.

(2) (1891) I.L.R., 18 Calc., 322.

(3) (1900) I.L.R., 27 Calc., 362.

KULANDAL-
VELU
NACHIAR
v.
RAMASWAMI
PANDIA
THALAVAN.
—
KUMABA-
SWAMI
SASTRI, J.